

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6361**

**BILL NUMBER:** SB 154

**NOTE PREPARED:** Feb 3, 2004

**BILL AMENDED:** Feb 2, 2004

**SUBJECT:** Operating a Vehicle While Intoxicated.

**FIRST AUTHOR:** Sen. Young R Michael

**FIRST SPONSOR:**

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- A. It makes the offense of operating a motor vehicle while intoxicated as a Class A misdemeanor a Class D felony if: (1) at least one passenger is less than 18 years of age; and (2) the driver is at least 21 years of age.
- B. It prevents persons who have been convicted of certain offenses involving operating a motor vehicle while intoxicated from obtaining a probationary license.
- C. It increases or establishes mandatory jail time for persons convicted of committing certain offenses involving operating a motor vehicle while intoxicated.
- D. It provides that certain persons convicted of OWI must receive assessments for alcohol and drug abuse.
- E. It requires a person convicted of OWI causing death to receive a nonsuspendible sentence if the person had a controlled substance in the blood, or a BAC greater than .15%.
- F. It specifies that a court is required to suspend the driver's license or vehicle registration of a person convicted of committing certain controlled substance offenses only if the court finds that a vehicle was used in the commission of the offense.

**Effective Date:** July 1, 2004.

**Explanation of State Expenditures:** (Revised) *Provision A: Class A Misdemeanor Increased to Class D Felony* – Under current law, a driver over the age of 21 who operates a vehicle while intoxicated with a minor in the vehicle commits a Class A misdemeanor. This bill would make this offense a Class D felony.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class D felony is punishable by a prison term ranging between six months and three years or reduction to

Class A misdemeanor. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$26,825 in FY 2002. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months. The court would be able to suspend only the sentence in excess of the six-month minimum sentence for repeat offenders convicted of the Class D felony.

*Provision B: Mandatory Suspension of Licenses* – This bill increases the suspension length of OWI-related offenses as shown below.

Offense	Length of Time a License May Be Suspended	
	<u>Current Law</u>	<u>Proposed</u>
OWI within past 5 years	One to two years or minimum one year suspension and one year probationary license with interlock device	One to two years
OWI at 0.15 blood alcohol content for first time	90 days to two years	180 days to two years
OWI or dangerous driving when driver is older than 21 and passenger younger than 18	90 days to two years	One to two years
Two violations under habitual traffic violator statute causing death	10 years	Lifetime

*Provision E: Serving the Mandatory Minimum Sentence for OWI While Causing Death* – Under current law, a court may suspend any portion of the sentence a person convicted of OWI and causing a person's death if the crime was committed more than seven years after the person has been discharged from probation, imprisonment, or parole, whichever is later. If the crime was committed within this seven-year period, then the person would be required to be imprisoned for a minimum two years before being eligible to be released. ***As proposed, any person with or without a prior conviction who causes a death while OWI would be required to be imprisoned for a minimum of two years.***

DOC reports the number of offenders committed to DOC for this offense between FY 1996 and 2003 as the following.

1996	1997	1998	1999	2000	2001	2002	2003
28	20	17	26	23	33	31	31

Increasing the minimum amount of time that an offender would be required to be imprisoned would increase the costs for the Department of Correction.

*Provision F:* If a person is convicted of any of the following offenses and the court finds that a motor vehicle was used to commit the offense, then the court shall suspend the person's license and motor vehicle registration for between six months and two years. The offenses affected by this provision include:

- dealing in cocaine or a narcotic drug; a schedule I, II, III, IV or V controlled substance; a counterfeit substance; or marijuana, hash oil or hashish.
- possession of cocaine or narcotic drug, controlled substance, marijuana, hash oil or hashish.

Depending on the findings of the court, this provision could increase the number of license suspensions.

**Explanation of State Revenues:** *Provision A:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class D felony is \$10,000. Court fees for both misdemeanors and felonies are \$120.

If a criminal action, infraction, or ordinance violation involves a traffic violation, including this proposed offense, a highway work zone fee of either \$0.50 or \$25.50 is assessed.

**Explanation of Local Expenditures:** *Provision C: Minimum Jail Time* -- Under current law, the courts are required to sentence persons convicted of drunk driving offenses to minimum prison time if the person in question has been convicted of a previous offense. This bill would impose a minimum jail time on a first offense as shown in the following table.

<u>Offense</u>	<b>Minimum Days of Imprisonment and Other Conditions</b>	
	<u>Current Law</u>	<u>Proposed Minimum</u>
No previous conviction and no passengers under 18 years	No mandatory amount	3 days
No previous conviction and passengers under 18 years	No mandatory amount	3 days
OWI with 1 previous conviction	5 days or 30 days community restitution	5 days <b>and</b> 30 days community restitution
OWI with 2 Previous Convictions	10 days or 60 days community restitution	<b>30</b> days or 60 days community restitution

The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

The number of offenders who are committed to county jails for this offense is currently unknown. To illustrate how this provision might affect county operations, offenders whose licenses were suspended and had one or more prior OWI offenses was considered.

BMV reported that for the period between October 1, 2002, and September 30, 2003, 3,100 individuals received a suspended license for OWI with a prior conviction of an OWI offense.

Based on a packet search of 130 offenders committed to DOC, DOC found that 80% had two or more prior unrelated offenses.

Assuming that 20% of the persons found guilty of OWI with a single prior OWI conviction, about 620 persons could be assigned to an additional 5 days of jail (if they are already assigned to community

restitution) or 30 days of community restitution (if they are already sentenced to 5 days of jail). For persons who have more than one prior OWI conviction, about 2,400 persons could be spending either an additional 20 days in jail or 60 days performing community restitution.

Persons Found Guilty of Operating a Vehicle While Intoxicated With One Or More Prior OWI Convictions in CY 2002	
Persons With One Prior Conviction	620
Persons With More Than One Prior Conviction	<u>2,480</u>
Total Number of Persons (based on license suspensions)	3,100
* Based on a packet search by DOC of 130 offenders, 20% had one prior conviction and the remaining 80% had more than one prior conviction.	

*Required Alcohol and Drug Abuse Assessment:* Under current law, a person convicted of an OWI offense and with a prior offense in the past five years must receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, the person must successfully complete the program. ***This bill would require any person convicted of OWI to be assessed.***

This provision would likely increase the number of persons convicted of OWI to undergo assessments by staff certified by either the Judicial Conference or the Division of Mental Health and Addiction. Under current law, judges have the discretion to order a person with no prior OWI offenses to undergo an alcohol and drug assessment, depending on the person's blood alcohol content and the person's personal history. So it is likely that courts are ordering some first-time OWI offenders to undergo alcohol and drug assessment and treatment. ***The added number of convicted persons needing to be assessed is estimated to be 8,794, based on the number of license suspensions for OWI between October 1, 2002, and September 30, 2003.***

*Certified Alcohol and Drug Programs:* Under current law, a court must order a person who is guilty of an OWI and has a prior conviction for OWI to undergo an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to order that person to successfully complete a treatment program. Nothing is specified in the statute about which programs that a court may refer those found guilty.

As proposed, this bill would require any person found guilty of OWI with or without a prior conviction to a program certified by either the Supreme Court or the Division of Mental Health and Addiction. As of December 2003, certified court-established alcohol and drug services programs operate in 51 counties. The costs of these programs are largely covered by user fees (see *Explanation of Local Revenues*) although the county may have to absorb some of the costs for providing services for indigent offenders.

**Explanation of Local Revenues:** *Misdemeanors and Felonies:* Court fees for both misdemeanors and felonies are \$120.

*Certified Alcohol and Drug Programs:* Under IC 12-23-14-16, the court may require a person to pay a fee of not more than \$400 for participation in a program.

**State Agencies Affected:** Department of Correction, Bureau of Motor Vehicles.

**Local Agencies Affected:** Courts, County Sheriffs.

**Information Sources:** Bureau of Motor Vehicles, Indiana Judicial Center, Department of Correction.

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